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8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

10
11 GOOGLE LLC,

12 Plaintiff,

13 vs.

14 SONOS INC,

15 Defendant.

Case No. 3:20-cv-06754-WHA

**GOOGLE LLC'S RESPONSIVE CLAIM
CONSTRUCTION BRIEF**

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Google LLC (“Google”) hereby submits its responsive claim construction brief for U.S. Patent Nos. 10,469,966 (“the ’966 Patent”) and 10,848,885 (“the ’885 Patent”)¹ and U.S. Patent Nos. 9,067,615 (“the ’615 Patent”) and 10,779,033 (“the ’033 Patent”) Patents.² Google provides constructions that follow the plain meaning reflected in the patent specification and the claims. Sonos, Inc.’s (“Sonos”) proposals are inconsistent with the intrinsic record, providing unduly narrow and lengthy definitions for well-understood terms like “playback device,” based solely on exemplary disclosed embodiments. For “playback queue” and “resource locator,” Sonos hides behind a “plain meaning” construction while its expert explicitly reads both terms far more broadly, eviscerating the plain meaning. Finally, the term “a media particular playback system” was already found indefinite by Judge Albright as part of the claim construction proceedings that occurred prior to the case being transferred from Texas to California, and the PTO also subsequently found that it could not “correct” the patent as Sonos requested to save its validity. Not only does Sonos urge the Court to ignore Judge Albright’s order and the PTO’s ruling, it also asks the Court to rewrite the claim language to save it from indefiniteness, which is neither proper nor the purpose of claim construction.

I. THE PRIOR CLAIM CONSTRUCTION ORDER

Sonos previously sought and ultimately received a claim construction from the Western District of Texas Court. Sonos had filed suit in the Western District of Texas, rather than in California where both Sonos and Google are located, because it assumed doing so would be favorable to its case. However, when Judge Albright ruled against Sonos’s claim constructions, Sonos began angling to ignore Judge Albright’s rulings and argue that they were merely “tentative” or “preliminary” constructions. This is baseless. Judge Albright issued a tentative ruling *prior* to the hearing, and then clearly ruled on the record as to the disputed constructions. Judge Albright’s rulings on the record were not mere “suggestions.” Nor did Sonos ask for

¹ These patents are related, sharing substantively the same specification and both claim priority to a single provisional application filed on September 12, 2006.

² These two patents are continuations, both claim priority to an application filed on Dec. 30, 2011.

1 reconsideration of Judge Albright’s rulings in the Western District, and Sonos has not asked for
2 reconsideration of those rulings here. Sonos is instead attempting to shortcut the reconsideration
3 process, which would have required Sonos to meet the high bar of proving a “material difference
4 in fact or law” from the time of the order or a “manifest failure” by the court to consider material
5 facts or dispositive legal arguments. LR 7-9(b). Sonos could not have met that standard here and
6 its efforts to bypass these requirements are improper.

7 On August 10, 2021, Judge Albright held a claim construction hearing on 17 claim terms
8 that were fully briefed by Google and Sonos.³ Ex. 1. Sonos re-raises for construction only two of
9 those terms here—the “zone player”/“playback device” term and the “media particular playback”
10 term. For the “zone player”/“playback device” term, Judge Albright explained that because his
11 tentative ruling was “plain and ordinary meaning,” the parties could re-raise the dispute after
12 expert reports, and therefore the parties agreed not to argue those terms. Ex. 1 at 5-13. However,
13 with respect to the non-plain and ordinary meaning terms, Judge Albright’s ruling was definitive,
14 including for the “media particular playback” term that Sonos re-argues here: “But I don’t think
15 this is a scrivener’s error. It may have been a mistake during the prosecution and maybe the
16 Patent Office can address it through some manner they have, but I don’t believe I can. I’m going
17 to maintain the construction of it being indefinite.” *Id.* at 66-67. Judge Albright’s ruling with
18 respect to the other non-plain meaning terms was equally definitive and final. For example, for
19 the “zone scene” term, Judge Albright held that “The construction for that claim term is going to
20 be: A previously-saved group of zone players according to a common theme.” *Id.* at 38. Judge
21 Albright made this ruling after announcing a new tentative ruling during the hearing and giving
22 the parties a chance to extensively argue over that new tentative ruling before finalizing it. *Id.* at
23 23-38. There can be no reasonable belief that Judge Albright was doing anything other than
24 making a final, binding ruling. *Contra* Br. at 2 (Sonos arguing that Judge Albright’s rulings were
25 an “expressly preliminary claim construction”).

26
27
28 ³ As discussed below, Judge Albright construed 13 of these terms as their plain meaning, which Sonos proposed the parties would not address at oral argument, and Google agreed.

1 Thus, in the instant case and in view of Sonos’s litigation positions, the prior constructions
 2 and indefiniteness rulings provided by the Texas court continue to apply, and Sonos’s approach in
 3 attempting to re-litigate these constructions is improper. *Snyders Heart Valve LLC v. St. Jude*
 4 *Medical*, 2020 WL 1445835, *4 & *6-*7 (D. Minn. 2020) (adopting “the Texas court’s prior
 5 constructions” because “under law-of-the-case/reconsideration principles, ‘as a rule,’ courts
 6 should be ‘loathe’ to revisit prior decisions of its own or of a coordinate court in the same case”
 7 unless the decisions were “clearly erroneous” or the parties “present new evidence.”).

8 Sonos makes four arguments in support of ignoring Judge Albright’s order—all are
 9 unavailing. First, Sonos argues that because Judge Albright did not “decide” the claim
 10 construction issues, his rulings are not “law of the case.” Br. at 1-2 (citing *Christianson v. Colt*
 11 *Indus. Operating Corp.*, 486 U.S. 800, 816 (1988) and *Augustine v. Principi*, 343 F.3d 1334, 1339
 12 (Fed. Cir. 2003)). But as shown above, Judge Albright clearly *did* decide the disputed claim
 13 construction issues (except for perhaps his plain and ordinary meaning rulings). Although
 14 *Christianson* involved a very different jurisdictional dispute between the Circuit Courts,
 15 *Christianson*’s discussion of “law of the case” actually *supports* Google’s position. *Id.* The
 16 Supreme Court noted that “[t]his rule of practice promotes the finality and efficiency of the
 17 judicial process by ‘protecting against the agitation of settled issues.’” *Id.* And further, “the
 18 doctrine applies as much to the decisions of a coordinate court in the same case as to a court’s own
 19 decisions.” *Id.* The same principles apply here because Sonos requested that the Western District
 20 of Texas court decide the claim construction issues while Google’s venue challenge was still
 21 pending, yet now seeks to void those rulings and ask for a second bite at the apple. *Augustine* is
 22 inapposite because there “[t]he Court specifically stated that the Board had not addressed that
 23 question and remanded to allow the Board to do so.” *Augustine*, 343 F.3d at 1339. Accordingly,
 24 unlike here, there truly was no decision by the court in *Augustine* to apply “law of the case.”

25 Second, Sonos argues that Judge Albright’s oral order cannot be binding because it does
 26 not provide his reasoning. Br. at 2. This is factually incorrect because Judge Albright *did* provide
 27 his reasoning. As described above for his ruling on the indefiniteness of the “media particular
 28 playback term,” for example, Judge Albright described that the applicant did not merely make a

1 “scrivener’s error,” that Judge Albright could not correct any error, and therefore that the claim
 2 term was indefinite. *Supra*. Further, the *Christianson* case explained that even if Judge Albright
 3 did not provide his rationale, that would be “irrelevant, for the law of the case turns on whether a
 4 court previously ‘decide[d] upon a rule of law’—which the Federal Circuit necessarily did—not
 5 on whether, or how well, it explained the decision.” *Christianson*, 486 U.S. at 816. Accordingly,
 6 regardless of whether Judge Albright explained his decision or issued a written order, Judge
 7 Albright’s ruling was final. Sonos also argues that under *Karl Storz Endoscopy-Am., Inc. v.*
 8 *Stryker Corp.*, this Court need not adopt or rely upon the Western District court’s ruling. No. 09-
 9 CV-355-WHA, 2011 WL 1659867, at *2 (N.D. Cal. May 3, 2011). But *Karl Storz* involved
 10 ***different*** parties, and those parties were not involved in the same litigation that was merely
 11 transferred. *Id.* Further, the constructions in *Karl Storz* were actually tentative, as compared to
 12 Judge Albright’s rulings here, which were final. *Id.* (“the parties reported at the April 27 hearing
 13 that the claim construction rulings from the Tennessee court are only tentative”). Sonos’s
 14 underlying argument seems to be that any oral order would be legally insufficient. That position is
 15 meritless. *Nike Inc. v. Wolverine World Wide, Inc.*, 43 F.3d 644 (Fed. Cir. 1994) (applying Ninth
 16 Circuit law) (observing that an “oral order can provide the requisite basis for a Rule 37 sanction”
 17 and concluding that the district court’s oral discovery order constituted a discovery order). Oral
 18 orders are just as binding and effective as written orders. *Noli v. Comm’r*, 860 F.2d 1521 (9th Cir.
 19 1988) (holding that oral order of judgment was sufficient); *Henry v. Sneiders*, 490 F.2d 315, 318
 20 (9th Cir. 1974) (upholding default judgment based upon an oral order to produce documents).

21 Third, Sonos argues that Judge Albright’s rulings cannot be followed because without a
 22 written order they would not facilitate appellate review. Br. at 3 (citing *Realtime Data LLC v.*
 23 *Reduxio Sys., Inc.*, 831 F. App’x 492, 493 (Fed. Cir. 2020)). Sonos’s legal support for this
 24 argument is threadbare, and *Realtime Data* is inapposite. *Realtime Data* involved a yes or no
 25 decision by the district court on the issue of abstract subject matter. *Id.* Noting that the issue of
 26 abstract subject matter was likely “the most baffling concept in all of patent law,” this created one
 27 of the “rare circumstances in which a district court’s treatment of a complex and close legal issue
 28 is too cursory to allow for meaningful appellate review.” *Id.* The Federal Circuit also found four

1 clear shortcomings in that court’s oral rulings—that the court focused improperly on factual issues
 2 at the motion to dismiss stage, its “questionable” process of determining *Alice* step 1, the failure to
 3 address lengthy Magistrate opinions on the same 101 issue, which had been adopted by two
 4 different district courts, and a failure to analyze the most directly applicable Federal Circuit cases,
 5 which were briefed as such. *Id.* at 496. The issues presented here are far simpler, and Sonos has
 6 raised no specific flaws in Judge Albright’s analysis. Further, the Federal Circuit ordered transfer
 7 of the case to this Court before Judge Albright could issue a written ruling, which further
 8 distinguishes the *Realtime Data* court’s decision to avoid a written ruling.

9 Finally, Sonos is incorrect that Google is asking for reconstruction of any of Judge
 10 Albright’s rulings. While it is true that Google proposed that “remote playback queue” be
 11 construed as a “remote playback queue provided by a third party application” in the Western
 12 District, neither party proposed a construction of the term “playback queue” itself. It later became
 13 necessary to construe “playback queue” alone because Sonos amended its infringement
 14 contentions more than five times *after* the *Markman* hearing in the Texas action that took place on
 15 August 10, 2021. In fact, Sonos did not reveal its specific infringement theories and the source
 16 code it was accusing of infringement until September 9, 2021, more than a month after the
 17 *Markman* hearing in the Texas action. It was through these amendments that Google determined
 18 that a claim construction was necessary because Sonos was seeking to interpret the term “playback
 19 queue” so broadly as to eliminate the requirement of a “queue” entirely. Sonos cannot be heard to
 20 complain about an issue that *it* created by adding myriad new infringement theories to this case.
 21 Further, there is no inconsistency with the law of the case doctrine, because Sonos’s new
 22 infringement theories constitute new evidence. *See Snyder’s Heart Valve LLC*, 2020 WL 1445835,
 23 *4 & *6-*7 (“courts should be ‘loathe’ to revisit prior decisions” unless the parties “present new
 24 evidence”).

25 **II. TECHNICAL BACKGROUND**

26 **A. Speaker Grouping And Zone Scenes**

27 Sonos refers to its ’966 and ’885 patents as its “Zone Scene Patents.” The Zone Scene
 28 Patents do not purport to invent grouping speakers together for music playback. Such speaker

1 groupings have long been known in the art. Patents filed years before the Zone Scene Patents
 2 described “remote unit[s] for selectively controlling . . . music *from the at least one group of*
 3 *speakers*.” U.S. Patent No. 7,339,492 at 1:10-12. The Zone Scene Patents likewise admit that
 4 “multi-zone audio system[s] that usually includes a number of audio players” were “conventional”
 5 at the time. ’885 Pat. at 1:46-61. Home audio systems from companies such as Bose and Crestron
 6 provided home theater enthusiasts the ability to set up multiple speaker zones in their house and
 7 dynamically select music to play from each. Ex. 2 at pp 15-20 (Bose System describing Preset
 8 Groups). Indeed, even Sonos’s own prior art products describe grouping speakers into “zones,”
 9 combining zones into “zone groups,” and including preset groups such as “Party Mode.” Ex. 3 at
 10 11.

11 **B. Playback Queues and “Direct Play”**

12 Sonos refers to its ’615 and ’033 patents as its “Direct Play” patents. The so-called “Direct
 13 Play” patents describe transferring playback of a “playback queue” of multimedia items from a
 14 “control device” (such as a Sonos controller) to a “playback device” (such as a Sonos speaker).
 15 The ’615 Patent claims recite that the “playback queue” is a “local playback queue” that is stored
 16 “on the playback device,” while the ’033 Patent claims recite a “remote playback queue.”

17 The “Direct Play” Patents claim priority to an application filed Dec. 30, 2011—six years
 18 after Sonos released its first products. By that time all the elements of Sonos’s alleged invention
 19 were well known, including playlist or queue management to transfer playback from one device to
 20 another. *See e.g.*, Exs. 4-6. And there is no need to take Google’s word for it. According to
 21 Sonos itself, “as of 1999-2000, implementing playlists on a network-enabled audio device to
 22 select, manage, and manipulate audio content was well known in the art.” Ex. 7 at 14. For
 23 example, the “RioPort Audio Manager provided a graphical user interface (GUIs) for users to
 24 select and play music transmitted from a central database in a network. Consumer products with
 25 playlist functions had become common by the year 2000.” *Id.* at 13. Before the filing date of
 26 these patents, Google itself had already developed its “YouTube Remote,” which permitted users
 27 to create a queue of videos on their phone and transfer playback to a playback device, such as a
 28

1 television. *See e.g.*, Ex. 8 (YouTube Remote); *see also*

2 <https://www.youtube.com/watch?v=EGdsOslqG2s> (YouTube Remote video, uploaded 11/14/10).

3 III. CLAIM TERMS

4 A. “zone player” (’966 and ’885 patents) / “playback device” (’615 and ’033 patents)

Sonos Construction	Google Construction
A data network device configured to process and output audio	Plain and ordinary meaning; no construction necessary at this time

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7
8
9 The plain and ordinary meaning should apply to the “zone player” and “playback device”
10 terms. These terms are easily understood by the jury without construction, and there is no reason
11 to depart from the plain meaning and artificially narrow the definition as Sonos requests. The
12 specification explains why “zone players” are called zone players—it is because they are audio
13 players within a zone: “Each of the audio devices may be installed or provided in one particular
14 area or zone and *hence referred to* as a zone player herein.” ’966 Pat. at 4:46-48; ’615 Pat. at
15 3:28-31 (“A zone player 102-124, also referred to as a playback device, multimedia unit, speaker,
16 and so on, provides audio, video, and/or audiovisual output.”). This is an archetype of plain and
17 ordinary meaning, because the specification describes “zone player” as simply the plain meaning
18 of both terms put together. *Altiris, Inc. v. Symantec Corp.*, 318 F.3d 1363, 1372 (Fed. Cir. 2003)
19 (“[S]imply because a phrase as a whole lacks a common meaning does not compel a court to
20 abandon its quest for a common meaning and disregard the established meanings of the individual
21 words.”); *Bancorp Services, L.L.C. v. Hartford Life Ins. Co.*, 359 F.3d 1367, 1372 (Fed. Cir. 2004)
22 (“It is true that the entire term ‘surrender value protected investment credits’ is not defined in the
23 patent, Nonetheless, the components of the term have well-recognized meanings, which allow
24 the reader to infer the meaning of the entire phrase with reasonable confidence.”). There is
25 certainly no “clear and unmistakable” disclaimer or lexicography that would require the Court to
26 exclude from these terms players and devices that are not connected to a “data network” or
27 configured to “process audio.”
28

1 Sonos’s history of proposed constructions for this term is enlightening. In the Western
 2 District of Texas, Sonos proposed construing “data network” as “a medium that interconnects
 3 devices, enabling them to send digital data packets to and receive digital data packets from each
 4 other,” and then proposed including the term “data network” in *three* other terms including both
 5 terms at issue here. Ex. 9. Judge Albright rejected Sonos’s attempt to import these limitations
 6 into any of the claim terms. Ex. 1 at 7:7-14. Now Sonos is making its same bid to import “data
 7 network” and “processing” limitations into these terms with only a bit more subtlety.

8 Sonos’s attempt at subtlety—by leaving its proposed “data network” and “process audio”
 9 terms undefined—results in a construction that *adds* ambiguity to the term, rather than reducing it.
 10 *Tessenderlo Kerley, Inc. v. Or-Cal, Inc.*, 2012 WL 3116059,*2-*3 (N.D. Cal. 2012) (rejecting
 11 proposed construction and holding that “[a] purpose of claim construction is to remove
 12 ambiguity.”) (Alsup, J.). First, it is not clear if Sonos is actually dropping its attempt to import a
 13 “digital” requirement into the claims as it did in the Western District or not. Because Sonos never
 14 mentions the words “digital” or “analog” in its argument, however, Sonos has waived any such
 15 argument and Google does not discuss it further. Similarly, Sonos offers no identification of what
 16 types of “audio processing” fall within the scope of the claims (amplification? equalization?) and
 17 therefore Google is left to guess at what Sonos is attempting to either include or exclude with its
 18 ambiguous construction.

19 Regardless, nothing in the specification or the prosecution history supports limiting the
 20 scope of the invention to exclude all non-data networking and audio processing embodiments.
 21 Sonos repeatedly states that every embodiment in the specification includes these requirements,
 22 but as discussed below this is not true, and it is legally insufficient regardless. “It is likewise not
 23 enough that the only embodiments, or all of the embodiments, contain a particular limitation. We
 24 do not read limitations from the specification into claims; we do not redefine words. Only the
 25 patentee can do that. To constitute disclaimer, there must be a clear and unmistakable disclaimer.”
 26 *Thorner v. Sony Computer Ent. Am. LLC*, 669 F.3d 1362, 1366–67 (Fed. Cir. 2012). “A
 27 disclaimer or disavowal of claim scope must be clear and unmistakable, requiring words or
 28 expressions of manifest exclusion or restriction in the intrinsic record.” *Unwired Planet, LLC v.*

1 *Apple Inc.*, 829 F.3d 1353, 1358 (Fed. Cir. 2016); *Cont'l Cirs. LLC v. Intel Corp.*, 915 F.3d 788,
 2 797 (Fed. Cir. 2019) (“Even when the specification describes only a single embodiment, the
 3 claims of the patent will not be read restrictively unless the patentee has demonstrated a clear
 4 intention to limit the claim scope using ‘words or expressions of manifest exclusion or
 5 restriction.’”) (quoting *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 906 (Fed. Cir.
 6 2004)”).

7 Sonos argues that its construction is required because the specifications distinguished
 8 “conventional multi-zone audio systems,” with hard-wired speakers, citing the ’966 Patent at 1:46-
 9 67 and the ’615 Patent at 6:50-60. Br. at 7. But the closest this portion of the ’966 Patent gets to
 10 disclaimer is the statement that “[w]hile the pre-programmed configuration may be satisfactory in
 11 one situation, it may not be suitable for another situation.” And the cited portion of the ’615
 12 Patent discloses that “[a]s such, certain embodiments described herein provide a more flexible and
 13 dynamic platform through which sound reproduction can be offered to the end-user.” These
 14 statements are nowhere close to the level of “words or expressions of manifest exclusion or
 15 restriction” required to affect a disclaimer. *Cont’l Cirs. LLC*, 915 F.3d at 797. To the contrary,
 16 they are merely describing that the conventional systems *are* satisfactory in particular “situations”
 17 and that “certain embodiments” benefit from a more dynamic platform. Sonos also attempts to
 18 distinguish “hard-wired” audio systems as “conventional” and disclaimed, but the patent explicitly
 19 states that preferred embodiments “may be a **wired network**, a wireless network or a combination
 20 of both.” ’966 Pat. at 4:62-63, 5:40-41 (“The network interface 202 may include one or both of a
 21 wireless interface 216 and a wired interface 217.”); *Braintree Lab ’ys, Inc. v. Novel Lab ’ys, Inc.*,
 22 749 F.3d 1349, 1356 (Fed. Cir. 2014) (“[a] claim construction that excludes the preferred
 23 embodiment ‘is rarely, if ever, correct and would require highly persuasive evidentiary support.’”).

24 Indeed, Sonos’s proposed constructions would exclude *its own* preferred embodiments. In
 25 the ’615 Patent, “[e]xample zone players include a . . . ‘Zone Player 90,’ which [was] offered by
 26 Sonos, Inc.” ’615 Pat. at 4:26-28. But the Zone Player 90 “is designed to be used with an external
 27 amplifier” and “contains both analog and digital outputs so that you can easily connect it to your
 28 existing audio equipment,” which may be “driven from an amplifier in one central location with

1 speaker wires home-run to this central location.” Sonos ZonePlayer 90 Setup Guide at 3. In other
 2 words, the preferred embodiment *was* hard wired to conventional powered speakers, and took
 3 analog audio input and output analog audio as well. *Id.* at 17.

4 Sonos’s reasoning (and support) to now import the “data network” term into the claims is
 5 therefore flawed. Although Sonos states that “data network” is “uniformly” required by “all” of
 6 the zone players, Br. at 7, that is not accurate as just discussed, and in any event the cited portion
 7 of the specification clearly states that this description is nonlimiting because it merely “shows an
 8 exemplary configuration 100 in which the present invention may be practiced.” ’966 Pat. at 4:39-
 9 41. Indeed, the specification discloses that the audio signals “*can* be transported or streamed over
 10 a data network,” but it does not *limit* such transportation to a data network. ’966 Pat. at 4:49-51.

11 Sonos’s citations in support of importing “audio processing” limitations in the claims fail
 12 for the same reason. None of them evidence a “clear and unmistakable” disclaimer or
 13 lexicography by the inventor. *Unwired Planet, LLC*, 829 F.3d at 1358. Instead, in each case they
 14 are simply describing a preferred embodiment, with no words of exclusion at all. Br. at 7-8.
 15 Further, the asserted claims already recite multiple “processors.” *E.g.*, ’885 Pat. Cl. 1 (“1. A
 16 computing device comprising: one or more processors; a non-transitory computer-readable
 17 medium; and program instructions stored on the non-transitory computer-readable medium that,
 18 when executed by the one or more processors . . .”). If the inventors wished to require the “zone
 19 players” to include processors for audio, they could have and should have done so.

20 Sonos also argues that its construction was adopted in *Sonos, Inc. v. D&M Holdings, Inc.*
 21 *et al.*, Case No. 14-cv-01330 (D. Del.) (“*D&M*”). Ex. 10. The *D&M* case, however, involved
 22 patents that have different claim language and which are *not* asserted here. *Id.* Google did not
 23 object to the *D&M* construction in the ITC case because the same *D&M* patents *were* at issue in
 24 the ITC.⁴ The same is not true here, and for that reason Google argues that the intrinsic and
 25 extrinsic evidence in *this* case should be applied. The Direct Play Patents were filed more than six
 26

27
 28 ⁴ In the ITC case, Google also agreed to constructions for two other patents, which also have no family relationship to the patents asserted in this case.

years after the ITC and *D&M* patents. It would be error to rely on constructions for different patents that are not at issue here, which are from a different time, and Sonos cites no authority justifying such an approach. *Emerson Elec. Co. v. SIPCO, LLC*, 826 Fed. App'x 904, 914 (Fed. Cir. 2020) (“construction of a particular term in one patent will not necessarily bear on the interpretation of the same term in a subsequent patent because the factual context is different. The term may be identical, but the intrinsic evidence is not.”).

B. “playback queue” (’615 and ’033 patents)

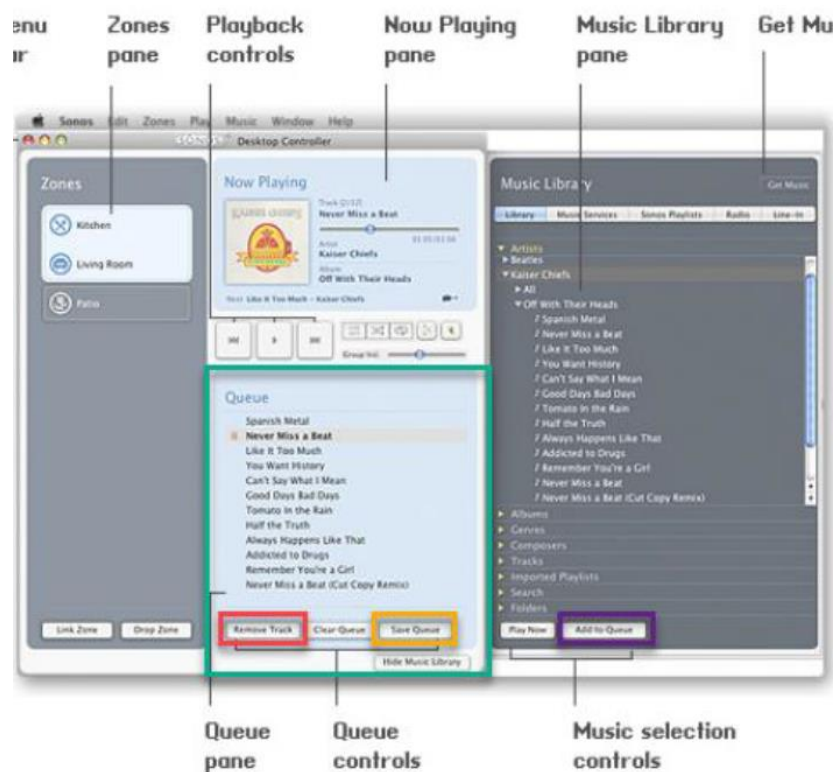
Sonos Construction	Google Construction
Plain and ordinary meaning; no construction necessary at this time	“an ordered list of multimedia items that is selected by the user for playback”

Consistent with its ordinary and customary meaning, the specifications of the ’615 and ’033 patents teach that a “playback queue” is an ordered list of multimedia items selected by the user for playback. For example, the specification explains that a user can create a queue of songs or videos and continue to add to or edit the queue. *See, e.g.*, ’615 Patent at 16:25-28 (“Two-way communication helps enable features such as keeping a local playback queue synchronized with a queue that the user is editing/managing in the third party application.”), 16:52-59 (“the third party application allows users to add, delete and so on from the queue, for example.”), 17:12-16 (“a user can queue up music while away from his or her house.”). The patents further teach that the multimedia items added to the queue are an ordered list having a position in the queue. *See, e.g.*, ’615 Patent at 9:29-31 (“The controller 500 is provided with a screen 502 and an input interface 514 that allows a user to interact with the controller 500, for example, to navigate a playlist of many multimedia items.”), 15:57-67 (local playback system can transmit information about the “current play position within a list”), 16:32-35 (“In certain embodiments, a local playback system can pass information back to a third party application to indicate a current point of playback (*e.g.*, now playing a third song in a playlist, fourth song in the playlist, and so on).”).

As Google’s expert, Dr. Kyriakakis, explains in his declaration, with support from technical dictionaries, industry materials (including those describing the playback queue in Sonos’s own products), and his experience in the field, Google’s proposed construction reflects

the plain and ordinary meaning of “playback queue” to a POSITA. *See* Ex. 11 (Kyriakakis Decl.) ¶¶ 46-47; *Phillips*, 415 F.3d at 1318 (explaining that expert testimony can be useful “to establish that a particular term in the patent or the prior art has a particular meaning in the pertinent field”). For instance, Google’s construction tracks the definition of a playback queue provided in Sonos’s own manuals from the relevant time period: “**What is a music queue? When you make music selections, they are added to a list of tracks called a music queue** When the current track ends, the next track in the queue starts to play, and play continues down through the list until the queue is completed.” Ex. 12

(Sonos User Manual) at 4-2 (emphasis added). Sonos’s manuals also provide a graphical representation of the playback queue (image on the right), wherein the playback “queue” includes an ordered list of music (green box), and is created by having users add (purple box) and remove (red box) items from the queue. Ex.



¶¶ 21-22. Other textbooks,

manuals, and dictionaries are in accord and confirm that Google’s proposed construction reflects the ordinary and customary meaning of the term “playback queue.” Ex. 13 (Windows Vista: The Missing Manual) at Section 16.4.7 (“**a queue is a waiting line, whether it’s the one at the Department of Motor Vehicles or the list of songs you’ve lined up to play**”) (emphasis added), Ex. 14 (“**The ‘Play Queue’ is a list of all tracks currently selected to be played.**”) (emphasis added); Ex. 11, ¶23 (illustrating a Spotify “Play Queue,” which is an ordered list of multimedia items); Ex. 15 (defining a “queue” as “a list of items waiting for attention in a computer system,

generally ordered according to some criteria.”). Sonos’s opening brief ignores Google’s evidence, and does not offer evidence that “playback queue” has any other meaning.

While Sonos nominally proposes that the term “playback queue” should be given its plain and ordinary meaning, Sonos’s expert confusingly opines that a “playback queue” refers to “a ‘container’ that can hold multimedia for playback.” Schmidt Decl., ¶47. Sonos’s expert does not identify any attributes that the “container” must have and goes so far as to claim that the “container” may simply be “memory” that can play back multiple media. Schmidt Decl., ¶88; *see also* Ex. 16 (3-3-2022 Schmidt Tr.) at 82:12-20 (testifying playback queue may be a “single data variable” in memory that stores a media item for playback). Not surprisingly, Sonos has not cited to any evidence (intrinsic or extrinsic) that would support such a vague and expansive reading of the term “playback queue,” and Sonos’s implicit proposed construction is erroneous as a matter of law because it gives the word “queue” no meaning. *Merck & Co., Inc. v. Teva Pharm. USA, Inc.*, 395 F.3d 1364, 1372 (Fed.Cir. 2005) (“A claim construction that gives meaning to all the terms of the claims is preferred over one that does not do so.”). Sonos’s proposed construction of a queue as merely memory, holding *zero* or more multimedia items, implies that a playback queue always exists in a computer, because the “memory” in that computer always at least holds some non-populated data.⁵ This situation has nothing to do with a queue, proving that Sonos has completely eviscerated the term “queue” from its construction. *Exmark Manufacturing Company Inc. v. Briggs & Stratton Corp.*, 2020 WL 5904445, *3-*4 (Fed. Cir. 2020) (rejecting construction that “would render the word ‘discharge’ meaningless.”); *Rothschild Connected Devices Innovations, LLC v. Coca-Cola Company*, 2020 WL 2517116, *4 (Fed. Cir. 2020) (rejecting construction that “reads out the term ‘interface’ in ‘user interface module.’”). In fact, Google asked Sonos’s expert at his deposition if there were *any* examples of memory that store multimedia for playback that would not satisfy his definition of “playback queue.” Ex. 16 at 82:21-84:1. He could not identify

⁵ Google’s construction includes a structural “ordered list” and therefore even a zero-element queue under Google’s construction does not suffer the same defect.

1 any, *id.*, exemplifying the extraordinary breadth of Sonos’s proposed construction. *Id.* For all
 2 these reasons, Sonos’s proposal must be rejected.

3 In addition, Sonos’s complaints about Google’s construction all miss the mark. First,
 4 Sonos argues that “not even Google’s expert believes that a ‘playback queue’ must have plurality
 5 ‘multimedia items.’” Br. at 10-12. Sonos’s argument is a strawman because Google has never
 6 disputed (and, in fact, agrees) that a playback queue may be empty before the user selects items to
 7 add to the queue, or that the queue may include a single item at a given time. Google’s
 8 construction does not foreclose an empty queue or a queue with a single item. A list of
 9 multimedia items can be an empty list, a list with one item, or a list with many items, as the
 10 references Sonos cites in its motion confirm. *See* US Publication No. 2012/0089910A1, ¶52
 11 (“media **listing can include zero, one or more additional items of media** content”) (emphasis
 12 added); *see also* *FitBit, Inc. v. AliphCom*, 2017 WL 386257, *14 (N.D. Cal. Jan. 27, 2017) (“The
 13 ordinary meaning of ‘list’ also supports the idea that the ‘list’ at issue can contain one or no items.
 14 Lists often can be empty or contain only one item.... **lists do not cease to become lists as soon as**
 15 **they contain one or no items—they are simply empty lists**. The same principles apply to the list
 16 of eligible devices.”) (emphasis added). This is a moot point, though, because the claims are not
 17 directed to an empty or single item queue. For instance, the ’033 Patent recites a “remote
 18 playback queue provided by a cloud-based computing system.” It further recites a “first mode” in
 19 which a “computing device is configured for playback of [the] remote playback queue,” and a
 20 “second mode” in which a “playback device” must “take over responsibility for playback of the
 21 remote playback queue from the computing device,” including by obtaining and playing “a **next**
 22 one or more media items that are in the remote playback queue.” By reciting that the playback
 23 queue includes a “next” media item, the claim language indicates that (1) media items in the queue
 24 have an order, and (2) that the queue has multiple items. In other words, although Google’s
 25 construction of “playback queue” does not preclude a list from having zero or one items, other
 26 language in the claims imposes additional restrictions that do require multiple items, rendering
 27 Sonos’s arguments about the size of the list moot. Google’s construction makes clear that a
 28 “playback queue” refers to the ordered list of multimedia items selected by the user for playback

1 on the playback device—whether that be an empty list or a list with multiple items—not any
2 vague “container” that stores an individual multimedia item (e.g., the next song) that is in a
3 remotely stored playback queue.

4 Second, Sonos argues that the specification discloses embodiments that queue a “single
5 audio track/song.” Br. at 11-12. Sonos’s citations to the specification do not support its position.
6 For instance, Sonos cites to various disclosures teaching that a playback device “may contain a
7 uniform resource locator (URL) that specifies an address to a particular audio track” or “a song
8 identifier.” Br. at 11-12 (citing ’615 Patent at 11:62-12:3, 10:42-46, 12:49-63, 13:36-40, 15:59-
9 62). None of these disclosures, however, purport to describe the complete set of items in the
10 queue or suggest that *only* a single URL or song identifier is in the queue. *Id.* Regardless, the
11 ability to create a queue with just a single item is consistent with Google’s proposed construction
12 as explained above.

13 Third, Sonos argues that a queue need not be a “list” because the specification discloses
14 embodiments having “multiple media items without requiring the ‘playback queue’ to contain a
15 list.” Br. at 12. But again, the disclosures Sonos cites to do not support its position; in fact, they
16 support Google’s position. For instance, Sonos cites to the following disclosure which expressly
17 discloses an ordered list of multimedia items: “Information passed over to the local playback
18 device may include an identifier for a single track, a playlist, a streaming radio station, a
19 programmed radio station, and so on. This information can also include a ***current play position***
20 ***within a list.***” ’615 Patent at 15:57-65 (emphasis added); Br. at 12 (citing 15:59-62). Moreover,
21 the assertion of Sonos’s expert that a “playback queue” may merely be a memory that is capable
22 of storing media items (“play_now” and “play_next”) conflicts with the description of a queue in
23 Sonos’s patents and documents. For instance, both sources explain that a user may make changes
24 to the queue, for instance by adding items to the queue such that the queue includes more than two
25 media items, or moving tracks around within the queue, whereas by contrast Sonos’s expert is
26 opining that two static identifiers (now and next) constitute the queue. ’615 Patent at 16:52-63;

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28

Ex. 12 (Sonos Guide) at 4-29 to 4-31.⁶ Sonos also provides “real world” examples that Sonos claims show that a queue is not an ordered “list,” like supermarket queues and a queue for tickets outside a theater. Br. at 13. These examples actually illustrate how far Sonos has strayed from the plain and ordinary meaning of the term “queue.” Under Sonos’s construction of “queue,” the supermarket and ticket-line queues wouldn’t need to be ordered at all—in other words, any user could check out immediately regardless of where they stood, and users would have no idea how close they were to getting a ticket because that line had no order either. This result is obviously illogical and incorrect. *Interactive Gift Exp., Inc. v. Compuserve Inc.*, 256 F.3d 1323, 1336 (Fed. Cir. 2001) (vacating judgment based on a construction that was “illogical and [did] not accord with the plain import of the claim language”). The argument that neither of these real world queues are “lists” is facile, because in the context of a playlist, it makes sense that the items in a queue can be listed, whereas in a ticket line, it makes sense that the items in the queue are humans, and can’t be listed (although their names could be). Indeed, the Federal Circuit instructs that claim constructions should take the context of the claim into account when fashioning an appropriate construction. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (*en banc*) (“the context in which a term is used in the asserted claim can be highly instructive.”). Regardless, the key point is that even Sonos’s real world examples must have an order, as Google’s construction (but not Sonos’s) requires.

Fourth, Sonos argues that “a ‘playback queue’ is not limited to a queue in which the media is ‘selected by the user for playback.’” Br. at 14-16. Sonos points to disclosures in the patent teaching that a user may stream a playlist from an online music service or a streaming radio station. Br. at 15 (citing ’615 Patent at 13:1-10, 15:59-62, 6:64-66, 8:63-66, 14:50-52). But these disclosures are consistent with Google’s construction. Playlists from online music services and streaming radio stations can be added to a playback queue (“Add to Queue”) or can be played without being added to a playback queue (“Play Now”). Ex. 12 (Sonos user manual) at 4-2 (with

⁶ Sonos also argues that the meaning of the term “ordered list” is unclear. Br. at 14. But Sonos’s attorney argument is undercut by its own expert who understands the term well enough to identify examples that are and are not an ordered list. Schmidt Decl., ¶¶48-54.

1 “Napster Automix [y]ou can create an instant playlist based on artist or a track selection” and then
 2 “Play Now” or “Add to Queue”), 4-34 (“Select a radio station, and click “Play Now” or “Add to
 3 Queue.”); *see also id.* at 4-10 (“To play all songs by an artist, on an album, or in a genre, select
 4 what you’d like to play, and then select “Play Now to play the music now, or Add to Queue to add
 5 it to your music queue.”). Consistent with this, the ’615 and ’033 patents explain that the
 6 multimedia content is added to the queue by the user. *See, e.g.,* ’615 Patent at 16:25-28 (“a queue
 7 that the user is editing/managing”), 16:52-59 (“application allows users to add, delete and so on
 8 from the queue, for example.”), 17:12-16 (“a user can queue up music.”).

9 Sonos also wrongly claims that Dr. Kyriakakis, Google’s expert, disagrees that the media
 10 in a “playback queue” is “selected by the user.” Br. at 16. But in fact, Dr. Kyriakakis testified
 11 that a playlist comprising a single song or multiple songs may be automatically generated and
 12 thereafter a user may add the playlist to the queue by, for instance, clicking “Add to Queue.” Ex.
 13 17 (Kyriakakis Tr.) at 51:6-9 (“Q. Likewise, **a user can add** an entire album to a playback queue
 14 without manually selecting each track in the album; correct? A. Correct.”), 56:1-24 (testifying that
 15 the user can select an artist to create a “Napster Automix” playlist and then add that playlist to the
 16 queue by selecting the button “Add to Queue.”); Ex. 12 at 4-24 (describing Automix feature).

17 Finally, Sonos contends that Google’s construction introduces ambiguity. Br. at 9-10.
 18 Sonos first argues that the term “multimedia item” is unclear, but this term comes from the patent
 19 itself and reflects the type of items being queued for playback: “The controller 500 is provided
 20 with a screen... to navigate a playlist of many multimedia items.” ’615 Patent at 9:29-31.⁷ Sonos
 21 also argues that the phrase “selected by the user” is unclear because it does not identify “which
 22 ‘user’ must select the ‘ordered list.’” Far from being ambiguous, Google’s construction merely
 23 distinguishes between a queue which requires the user to select and add items and other
 24 multimedia streams such as a radio in which the user does not create any such queue.

25
 26
 27 ⁷ As Google’s expert explained during deposition, Google’s construction of “playback queue”
 28 acknowledges that not all playback queues must contain the “multimedia content” itself. Ex. 17.
 Whether “resource locators,” “identifiers,” or the “multimedia content” must be added to the
 playback queue will be dictated by the claim language.

Google draws its proposed construction directly from the intrinsic evidence. Sonos, on the other hand, seeks to hide behind a “plain meaning” proposal while its expert attempts to read the concept of a “queue” out of the claims, purportedly under that plain meaning. The parties have a clear dispute regarding the scope of the claim, which the Court should resolve. *O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1360 (Fed. Cir. 2008) (“When the parties raise an actual dispute regarding the proper scope of these claims, the court, not the jury, must resolve that dispute.”).

C. “resource locator” [’615 Patent]

Sonos Construction	Google Construction
Plain and ordinary meaning; no construction necessary at this time	“an address of a resource on the Internet”

Claim 13 of the ’615 Patent recites “one or more first cloud servers adding, to the local playback queue, one or more resource locators corresponding to respective locations of the multimedia content at one or more second cloud servers of a streaming content service.” The parties dispute whether a “resource locator” must “locate” a resource via an address or whether a “resource locator” refers to a broader category that includes resource identifiers. Having deliberately chosen to use the term “resource locator” when it drafted the claims, Sonos now tries to back away from the plain meaning of that term and sweep in anything that could be considered a mere “identifier.” This is contrary to both the plain meaning of a “resource locator” as well as the intrinsic and extrinsic evidence.

Starting with the claim language, the phrase “resource locator” itself indicates that a “resource locator” locates a resource, *i.e.*, provides a location for a resource. Ex. 11, ¶58. In the Internet context, locations of resources are provided as addresses, such as URLs. *Id.* Dr. Kyriakakis testified that “the term ‘resource locator’ is often used in the art as shorthand for the phrase ‘Uniform Resource Locator’ or URL.” Ex. 11, ¶57, Ex. 17 (Kyriakakis 03.01.2022 Dep. Tr.) at 60:16-61:13. The language of the claim also indicates that the resource locators “correspond[] to respective locations of the multimedia content,” and that this content is “at one or more second cloud servers.” ’615 Patent Claim 13. Because resource **locators** correspond to

1 respective **locations** of the multimedia content at one or more internet servers, and **locations** of
 2 resources on the Internet are given by addresses, the claim language itself indicates resource
 3 **locators** must be an address for the resource on the Internet. Ex. 11, ¶59.

4 The language of dependent Claim 20 also supports Google’s construction. In particular,
 5 Sonos would have its “plain and ordinary meaning” of “resource locator” encompass not only
 6 resource locators, but also any mere “identifier” of the multimedia content. But Claim 20 shows
 7 that a “resource locator” and an “identifier of the multimedia content” are different things.
 8 Whereas independent Claim 13 recites that “causing one or more first cloud servers to add
 9 multimedia content to a local playback queue on the particular playback device” comprises
 10 “adding, to the local playback queue, one or more resource locators,” dependent Claim 20 recites
 11 “wherein causing the one or more first cloud servers to add multimedia content to the local
 12 playback queue on the particular playback device comprises causing an identifier of the
 13 multimedia content to be added to the local playback queue.” *See SIPCO, LLC v. Emerson*
 14 *Electric Co.*, Fed. App’x 2019 WL 6998644, *3 (Fed. Cir. 2019) (“Because the patentee chose to
 15 use different terms to define the ‘receiver address’ and the ‘scalable address,’ we presume that
 16 those two terms have different meanings.”). Sonos responds that dependent claim 20 broadens the
 17 meaning of “resource locator” because that claim uses the term “identifier,” and therefore Sonos
 18 argues that “resource locator” must necessarily include an “identifier.” Br. at 18-20. This
 19 argument fails because claim 20 never even mentions the term “resource locator,” and therefore it
 20 is not narrowing or broadening that term. *Wright Medical Technology, Inc. v. Osteonics Corp.*,
 21 122 F.3d 1440, 1445 (Fed. Cir. 1997) (claim differentiation avoids interpreting “an independent
 22 claim in a way that is inconsistent with a claim which depends from it”). Instead, claim 20
 23 narrows the independent claim by adding a *new* “identifier” to the local playback queue, but that
 24 new identifier is separately claimed and distinct from the claimed “resource locator.”

25 The specification also supports Google’s construction. The only instance where the ’615
 26 Patent specification discloses “resource locators” is as part of the larger phrase “uniform resource
 27 locator (URL),” which specifies an address. For example, the specification discloses that “zone
 28 player 602 may contain a uniform resource locator (URL) that specifies an address to a particular

1 audio track in the cloud. Using the URL, the zone player 602 may retrieve the audio track from the
 2 cloud, and ultimately play the audio out of one or more zone players.” ’615 Patent, 11:65-12:3.
 3 Similarly, the specification discloses that “a uniform resource locator (URL)” can be used to
 4 locate and “fetch content from a cloud and/or other networked source, for example.” ’615 Patent,
 5 12:53-56. Thus, the specification indicates a “resource locator” in the claims is shorthand for a
 6 “uniform resource locator.”

7 In addition, the ’615 Patent distinguishes between a resource locator, and a mere identifier.
 8 For example, the ’615 Patent discloses that “[o]nce the zone player has a URL (or some other
 9 identification or address) for a song and/or playlist, the zone player can run on its own to fetch the
 10 content.” ’615 Patent, 12:57-61. The ’615 Patent also indicates that “certain embodiments
 11 provide cross-service linking such that a song identifier can be passed from one user and/or
 12 service to another to be fetched and played.”). *Id.*, 13:31-33.

13 Sonos points to certain portions of the specification as allegedly disclosing “the use of a
 14 URL or ‘some other identification’” as evidence that a resource locator can be an identifier. Br. at
 15 17. But none of these “identifiers” are “locators” as required by the claim. For example, the ’615
 16 specification discloses “some other identification *or* address.” ’615 Patent at 12:53-63. A “song
 17 identifier,” such as the name of the song or its artist, can be used to look up a song but is not
 18 necessarily a “locator.” *Id.* at 13:36-40. Nor is “music information,” which could simply be the
 19 length of the track, a resource “locator.” *Id.* at 15:59-67, 16:9-19. A POSITA would understand,
 20 as Dr. Kyriakakis opined, that a “locator” must do more than identify or provide generic music
 21 information about a multimedia item, it must ***provide a location***. Ex. 11, ¶58. And a POSITA
 22 would understand, as Dr. Kyriakakis opined, that here a “resource locator” is not distinct and
 23 different from a URL, it is simply shorthand for a URL. Ex. 11, ¶57.

24 Sonos also argues Google’s proposed construction is too restrictive, and Google is
 25 improperly reading out embodiments in the specification. Google’s construction does no such
 26 thing, at least because, as discussed above, there are no “resource locators” which are not URLs.
 27 Sonos argues that “a POSITA would have known that certain types of URLs (*e.g.*, PURLs) did not
 28 specify an ‘address of a resource.’” Br. at 25. What a PURL is or is not is irrelevant here. The

1 specification of the '615 Patent is silent with respect to PURLs, and the PURLs have no bearing
2 on whether the “identifiers” Sonos accuses are URLs. Sonos also mischaracterizes Dr.
3 Kyriakakis’s testimony on this point. Dr. Kyriakakis testified that “it is my opinion that a PURL
4 is not a resource locator. It wouldn’t point directly to a multimedia content item.” Ex. 17
5 (Kyriakakis Dep. Tr.) at 68:2-8. But a PURL would still point, indirectly, to the location of a
6 resource. Ex. 17 (Kyriakakis Dep. Tr.) at 65:7-66:7 (explaining that a “PURL does not stand on
7 its own” and that “a PURL points to an intermediate resolution service. The PURL Resolution
8 Service associates the PURL with the actual URL and returns that URL to the client. The client
9 can then complete the URL transaction in a normal fashion... for example, when you type in
10 Lakers.com, it might take you to Lakers.MBA.com, which is the original URL. The PURL would
11 be the Lakers.com”).

12 The extrinsic evidence further supports Google’s proposed construction. For example, the
13 Merriam-Webster dictionary does not include a separate entry for “resource locator.” Instead,
14 searching for “resource locator” in the online version of the dictionary redirects to “URL,” which
15 is defined in relevant part, as “the address of a resource (such as a document or website on the
16 Internet.” In fact, to the extent that the term “resource locator” is not shorthand for a “uniform
17 resource locator,” the term has no universal meaning and cannot be construed broader than the
18 specification’s disclosure of “universal resource locators.” *See Goldenberg v. Cytogen, Inc.*, 373
19 F.3d 1158, 1164 (Fed. Cir. 2004) (“Where a claim term has no ordinary and customary meaning, a
20 court must resort to the remaining intrinsic evidence . . . to obtain the meaning of that term.”).

21 Sonos relies on U.S. Patent No. 8,533,469, titled “Method and Apparatus for Sharing
22 Documents,” as allegedly supporting its argument that “resource locator” was used separately
23 from URL. But Sonos’s cited disclosure states that a “resource locator may be a reference
24 associated with the electronic document that would allow user 106 *to locate* or request access to
25 the electronic document,” and goes on to describe the resource locator as a “URL.” U.S. Patent
26 No. 8,533,469 column 3 line 32 to 37. This disclosure is thus entirely consistent with Google’s
27 construction.

28

1 **D. “a media particular playback system” [’615 Patent]**

Sonos Construction	Google Construction
“a media playback system”	Indefinite

2 There is no dispute that claims 3, 15 and 26 of the ’615 Patent as written are indefinite.
3
4 Rather, Sonos is solely—and improperly—asking this Court to save these claims by rewriting
5
6 them. As the Western District of Texas court already found, however, this was not a scrivener’s
7
8 error that the court can correct. Ex. 1 (Hearing Tr.) at 66:21-67:2. As such, that court held claims
9
10 3, 15, and 26 indefinite as a matter of law. *Id.* For the reasons discussed above, it is improper for
11
12 Sonos to seek a do-over of that decision here. Dissatisfied with the district court’s ruling, and
13
14 perhaps spurred on by that court’s statement that “I just don’t think I have the power to do this. . . .
15
16 I think maybe the Patent Office does,” Sonos then petitioned the USPTO to have the claim
17
18 corrected. *Id.*; Br. Ex. 18. The USPTO, however, agreed with Judge Albright that this was not a
19
20 typographical error and that changing the claims as Sonos requested “would materially change the
21
22 scope of meaning of the patent.” Br. Ex. 19. Sonos has therefore now argued this issue twice,
23
24 before two different bodies, and lost both times. Sonos makes no persuasive argument that this
25
26 Court should hold differently.

17 “A district court can correct a patent only if (1) the correction is not subject to reasonable
18
19 debate based on consideration of the claim language and the specification and (2) the prosecution
20
21 history does not suggest a different interpretation of the claims.” *Novo Indus., L.P. v. Micro*
22
23 *Molds Corp.*, 350 F.3d 1348, 1357 (Fed. Cir. 2003). “Those determinations must be made from
24
25 the point of view of one skilled in the art.” *Ultimax Cement Mfg. Corp. v. CTS Cement Mfg.*
26
27 *Corp.*, 587 F.3d 1339, 1353 (Fed. Cir. 2009). Here, the proposed correction *is* subject to
28
29 reasonable debate and therefore the claim is indefinite. Ex. 11, ¶¶56-59.

24 Claims 3, 15 and 26 of the ’615 Patent recite “detecting a set of inputs to transfer playback
25
26 from the control device to a particular zone group of a media particular playback system.” In
27
28 contrast, claims 1-2, 13-14 and 25 recite a “particular playback device,” and claims 2 and 14 recite
29
30 a “media playback system” separate and distinct from the “particular playback device.” Contrary
31
32 to what Sonos asserts, a POSITA would not readily understand that the inclusion of the word

1 “particular” in the phrase “media particular playback system” was a typographical error to be
 2 corrected by omitting “particular.” Ex. 11, ¶56.

3 There is no indication to a POSITA whether the “media particular playback system” of
 4 claims 3, 15, 26 corresponds to a playback system that can only play particular media formats,
 5 particular media types, or whether the inclusion of the word “particular” or the word “media” is a
 6 typographical error. *Id.* Although Dr. Schmidt opines that Sonos made a typographical error (Br.
 7 Ex. 9 at ¶¶100-104), Dr. Kyriakakis explains a POSITA could nonetheless understand “media
 8 particular” as intended to differentiate from “multimedia,” *i.e.* a playback system specific to a
 9 particular type of media – such as audio. Ex. 11, ¶56. As Dr. Kyriakakis opines, certain playback
 10 systems also do not play back media. Ex. 11, ¶57. For example, an RF spectrum analyzer records
 11 and plays back RF data, not audio or video media. Accordingly, a POSITA could also understand
 12 “media particular playback system” as a subset of “playback systems.” *Id.* Evidently, Dr.
 13 Kyriakakis and Dr. Schmidt do not understand dependent claims 3, 15 or 26 in the same way,
 14 underscoring the indefiniteness of this claim term. Ex. 11, ¶103.

15 The prosecution history also does not resolve the reasonable debate relating to the use of
 16 the term “particular.” Sonos argues that the phrase “a media particular playback system” was
 17 introduced during prosecution when Sonos amended the independent claims to recite a “***particular***
 18 playback device” by propagating the word “particular” in front of “***playback*** device” in various
 19 dependent claims. Br. at 22. However, there is no indication in the prosecution history that the
 20 “media particular playback system” was in error in claims 3, 15 and 26. Sonos paid the issue fee
 21 without any amendments after allowance, and Sonos did not submit any certificates of correction.
 22 At best, the prosecution history is inconclusive.

23 Sonos argues that a POSITA would not “reasonably interpret the phrase as a ‘playback
 24 system that can only play particular media formats (*e.g.*, only MP3 formats)” because allegedly
 25 the ’615 Patent “provides no support for such a system.” Br. at 22-23. But contrary to Sonos’s
 26 assertion, the ’615 Patent does disclose playback systems that are configured to playback specific
 27 types of format—*e.g.*, a playback system whose source is a “CD player” or “turntable.” ’615 Patent
 28 at 6:61-7:12. CD players may play back certain audio formats MP3 or WAV formats.

1 Sonos also wrongly claims that “Google’s only other argument is that ‘media particular’
 2 was meant to distinguish a ‘playback system’ that can playback media from one that cannot.” Br.
 3 at 23. Not so. Rather, Google explained that a POSITA could reasonably interpret the claim to
 4 identify a system that is not restricted to a particular type of media versus one that has restrictions
 5 on the particular type of media that can be played—in other words, a playback system that can only
 6 play back “particular” media. Ex. 11, ¶56.

7 Finally, Sonos’s case law is inapposite. In *Finjan, Inc. v. Sonicwall, Inc.*, No. 17-CV-
 8 04467, 2019 WL 1369938, at *6 (N.D. Cal. Mar. 26, 2019) the court concluded that the correction
 9 was not subject to reasonable dispute, including because a prior court had concluded the same and
 10 should be given “deference.” Here, in contrast, Google has shown that the meaning of the claim
 11 language at issue is subject to reasonable dispute and a prior court as well as an administrative
 12 body have concluded the same. Sonos’s reliance on *Leveraged Innovations, LLC v. Nasdaq OMX*
 13 *Group, Inc.*, 2012 WL 4062100, *16 (S.D.N.Y.) is similarly misplaced. *Leveraged* concluded that
 14 a claim included a typographical error and relied upon the fact that the language with the
 15 typographical error was “nowhere present” in the patent. The opposite is true here, because the
 16 **correction** that Sonos is proposing—“a media playback system”—is nowhere present in the
 17 specification. Finally, none of Sonos’s cases involve a situation where, as here, a prior court (the
 18 Western District of Texas) **and the USPTO** already found correction was
 19 inappropriate. Accordingly, the term “media particular playback system” is indefinite.

20
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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on April 4, 2022, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document through the Court's CM/ECF system.

/s/ Charles K. Verhoeven
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